

United States
Circuit Court of Appeals

For the Ninth Circuit. 17

H. E. WARNER, Trustee of the PUGET SOUND
QUALITY STORES, a Washington corpora-
tion, Bankrupt,
Appellant,

vs.

R. E. SCHONER, C. P. AINSWORTH, J. E.
ROULLARD, and O. M. FREEBORG,
Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division.

FILED

MAR 6 - 1937

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court of the United States, Western
District of Washington, Northern Division

In Bankruptcy No. 33499

In the Matter of

PUGET SOUND QUALITY STORES, INCORPORATED, a Washington corporation,
Alleged Bankrupt.

PETITION FOR ADJUDICATION
IN BANKRUPTCY.

To the Honorable JOHN C. BOWEN, Judge of
the District Court of the United States for the
Western District of Washington, Northern
Division:

The petition of Richardson & Holland, Inc., a
Washington corporation, Pratt-Low Preserving
Company, a California corporation, and Seattle
Glove Company, a Washington corporation, re-
spectfully shows:

I.

That Puget Sound Quality Stores, Incorporated,
is a monied, business or commercial corporation
organized under and pursuant to the laws of the
State of Washington, as a co-operative association,
and is not a municipal, railroad, insurance or
banking corporation, and is principally engaged in
the wholesale grocery business, and that it has for
the greater portion of the six months next preceding
the date of filing of this petition had its principal
place of business in the City of Seattle, State and
District aforesaid, and owes debts to the amount of
\$1,000.00 and upwards, and is insolvent, and is
neither a wage earner nor a person engaged prin-
cipally in farming or the tillage of the soil.

II.

That your petitioners are creditors of the said Puget Sound Quality Stores, Incorporated, the alleged bankrupts, having provable claims against it amounting to the aggregate in excess of securities held by them to the sum of \$500.00; that none of your petitioners is entitled to priority of payment of his said claim within the meaning of Section 64(b) of the United States Bankruptcy Act and amendments thereof, nor has any of your petitioners received a preference within the meaning of Section 60(a)-(b) of such law as amended.

III.

That the nature and amount of your petitioners' claims are as follows:

(1) Richardson & Holland, Inc.—goods, wares and merchandise sold and delivered to the alleged bankrupt within three years last past, of the reasonable and agreed value of \$248.47, of which no part has been paid, although duly demanded;

(2) Pratt-Low Preserving Company—goods, wares and merchandise sold and delivered to the alleged bankrupt within three years last past, of the reasonable and agreed value of \$2,768.13, of which no part has been paid, although duly demanded;

(3) Seattle Glove Company—goods, wares and merchandise sold and delivered to the alleged bankrupt within three years last past, of the reasonable and agreed value of \$164.50, of which no part has been paid, although duly demanded.

That none of your petitioners hold any security.

IV.

That your petitioners represent that the said alleged bankrupt, Puget Sound Quality Stores, Incorporated, while insolvent, and within four months next preceding the date of this petition, September 19, 1934, committed an act of bankruptcy in that, because of its insolvency, a receiver, C. A. Dornberg, was appointed for the said alleged bankrupt and placed in charge of the properties of said alleged bankrupt on July 31, 1934, by order of the Superior Court of the State of Washington for King County in the entitled action, "L. L. Hubbard, et al, plaintiffs, vs. C. F. Bishop, Jr. et al, defendants, No. 253971", in accordance with the laws of the State of Washington, and has continued to act as such receiver.

WHEREFORE, your petitioners pray that service of this petition, with a subpoena, be made upon the said Puget Sound Quality Stores, Incorporated, as provided in Acts of Congress relating to bankruptcy, and that it may be adjudged bankrupt within the purview of said acts.

RICHARDSON & HOLLAND, INC.

By V. R. RICHARDSON

Its President

PRATT-LOW PRESERVING

COMPANY

By WARREN BROWN, JR.

Its Attorney in Fact

SEATTLE GLOVE COMPANY

By R. B. DAVIS

Its President

BOGLE, BOGLE & GATES

Attorneys for Petitioners.

State of Washington,
County of King—ss.

V. R. RICHARDSON, WARREN BROWN, Jr.,
and R. B. DAVIS, do hereby severally make solemn
oath that they are the officers, or attorney in fact,
of the petitioning creditors, as shown by their sig-
natures to the foregoing petition; that they were
duly authorized to execute the foregoing petition
in behalf of the respective creditors; that the state-
ments contained in the foregoing petition are true.

V. R. RICHARDSON
WARREN BROWN, Jr.
R. B. DAVIS

Subscribed and sworn to before me this 19th day
of September, 1934.

[Seal] GEORGE F. KACHLEIN, Jr.
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed Sept. 20, 1934.

[Title of Court and Cause.]

PETITION OF GENERAL FOOD SALES CO.
INC. TO INTERVENE.

To the Honorable John C. Bowen, Judge of the
District Court of the United States, for the
Western District of Washington, Northern
Division:

The petition of GENERAL FOODS SALES CO.
INC., respectfully alleges and shows:

I.

That your petitioner, General Foods Sales Co. Inc. is a creditor of the above named bankrupt, having a provable claim against same amounting to FIFTY THREE HUNDRED FIFTY FOUR & 30/100 (\$5354.30) DOLLARS, without any security held by it.

II.

The nature and amount of petitioner's claim is as follows: Balance due for goods, wares and merchandise sold and delivered by petitioner to said bankrupt within the three years last past, and that no part thereof has been paid, although duly demanded.

III.

That on the 20th day of September, 1934, RICHARDSON & HOLLAND, INC., a Washington corporation, PRATT-LOW PRESERVING COMPANY, a California corporation, and SEATTLE GLOVE COMPANY, a Washington corporation, filed in the office of the Clerk of the above entitled Court, a petition that PUGET SOUND QUALITY STORES, INCORPORATED be adjudged involuntary bankrupt, which petition is still pending.

IV.

Your petitioner desires to join in the said petition as an intervening creditor therein.

V.

Your petitioner hereby refers to each and all of the allegations of said involuntary petition in bank-

ruptcy, and makes them a part of this intervening petition, the same as if entirely re-written herein, excepting as to the allegations of said original petition respecting the Act of Bankruptcy alleged therein to have been committed by said bankrupt; and in lieu thereof your petitioner represents;

That said Puget Sound Quality Stores, Incorporated is insolvent, and that within the four months next preceding the date of filing of this petition said Puget Sound Quality Stores, Incorporated, committed an Act of Bankruptcy in that heretofore, to-wit: on or about the 31st day of July, 1934, whilst insolvent, a receiver was appointed and put in charge of its property by order of the Superior Court of the State of Washington in and for King County, in an action wherein L. L. Hubbard, et al., were plaintiffs, and C. F. Bishop, Jr., et al., were defendants, and said receiver ever since has continued to be, and now is in charge of the property of the alleged bankrupt. A certified copy of the order of said Court in that connection is hereto attached, marked Exhibit "A", and by reference thereto made a part of this petition.

WHEREFORE, your petitioner prays that it may be joined as an intervening petitioning creditor in said petition heretofore filed herein by Richardson & Holland, Inc., Pratt-Low Preserving Company, and Seattle Glove Company, for the adjudication of such debtor as a bankrupt, and that said debtor may be adjudged a bankrupt accordingly, within the

purview of the Bankruptcy Act of 1898 and the amendments thereof.

GENERAL FOODS SALES CO., INC.,
Petitioner.

By LEOPOLD M. STERN,
One of its Attorneys.

State of Washington,
County of King—ss.

LEOPOLD M. STERN, being first duly sworn, on oath deposes and says; that he is a member of the firm of Stern & Stern, attorneys for GENERAL FOODS SALES CO., INC., a corporation, the petitioning creditor above named; and he does hereby make solemn oath that the statements of fact contained in the foregoing petition are true:

That he makes this verification because none of the officers of said corporation are within the State of Washington, and for that reason this verification cannot be made by the officers of said petitioning creditor in person, and he further states that he is authorized by his said principal to represent them in joining and verifying said petition in its behalf.

LEOPOLD M. STERN.

Subscribed and sworn to before me this 22nd day of September, 1934.

[Seal]

B. T. WOODS,

Notary Public in and for the State of Washington,
residing at Seattle.

EXHIBIT "A"

In the Superior Court of the State of Washington
for King County.

No. 253971.

L. L. HUBBARD, et al.,

Plaintiffs,

vs.

C. F. BISHOP, JR., et al.,

Defendants.

ORDER APPOINTING RECEIVER FOR
PUGET SOUND QUALITY STORES.

This cause coming on duly and regularly for hearing upon the application of the plaintiffs herein, and it appearing that the Court did on the thirtieth day of July, 1934, make and enter its Final Decree herein, decreeing, among other things, that C. A. Dornburg of Seattle, Washington, be appointed as temporary receiver for Puget Sound Quality Stores, and the Court being fully advised, it is hereby

ORDERED, ADJUDGED AND DECREED that the said C. A. Dornburg be and hereby is appointed as temporary receiver for Puget Sound Quality Stores, a co-operative association of the State of Washington, to temporarily assume the active management of said Puget Sound Quality Stores, and to continue as such temporary receiver until the further order of this Court, such receiver to be subject to the further orders and directions of the

Court herein as to the employment of accountants and all other matters pertaining to or incidental to the carrying on of the management of said business; that said temporary receiver shall qualify therefor for giving a bond in the sum of Ten Thousand Dollars (\$1,000.00) and making and filing an oath herein, and that upon the execution, filing and approval of said bond, and upon the taking and filing of said oath that said temporary receiver shall immediately enter upon the carrying out of his duties as hereinabove provided.

Done in open Court this 31st day of July, 1934.

JOHN A. FRATER,

Judge.

Filed in County Clerk's Office, King County, Wash., Jul. 31, 1934. Abe N. Olson, Clerk. By W. H. Hicks, Deputy.

[Title of Court and Cause.]

State of Washington,
County of King—ss.

I, Abe N. Olson, County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington for the County of King, do hereby certify that I have compared the foregoing copy with the original Order Appointing Receiver for Puget Sound Quality Stores in the above entitled cause as the same appears on file and of record in my office, and the same is a true and perfect transcript of said original and of the whole thereof.

WITNESS my hand and seal of the said Superior Court, at my office in Seattle, this 22nd day of September, 1934.

[Seal]

ABE N. OLSON,

Clerk,

By S. R. B. ATTENFELD,

Deputy.

[Endorsed]: Filed Sept. 24, 1934.

[Title of Court and Cause.]

ORDER ALLOWING INTERVENTION.

Upon reading and filing the petition of General Foods Sales Co. Inc., verified September 22, 1934, praying that it be joined as petitioning creditor in the above entitled proceeding, and upon the petition in bankruptcy and all proceedings heretofore had herein, and upon motion of Stern & Stern, attorneys for said petitioner, it is

ORDERED, that GENERAL FOODS SALES CO. INC., be, and it hereby is allowed to intervene herein, and is hereby joined and made a petitioning creditor in the petition praying for the involuntary adjudication of PUGET SOUND QUALITY STORES, INCORPORATED, filed in the office of the Clerk of the District Court of the United States for the Western District of Washington, Northern Division, on the 20th day of September, 1934.

Entered at Seattle this 24th day of September,
1934.

JOHN C. BOWEN,
District Judge.

Presented by:

ALLEN ORTON,
One of Attorneys for Petitioners.

[Endorsed]: Filed Sept. 24, 1934.

[Title of Court and Cause.]

PRAECIPE FOR SECOND SUPPLEMENTAL
TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court
for the Western District of Washington, North-
ern Division:

You are hereby requested to make a second sup-
plemental transcript of record to be filed in the
United States Circuit Court of Appeals for the 9th
Circuit, pursuant to an appeal allowed in the above
entitled proceeding and to include in such second
supplemental transcript, the following:

1. Petition for Adjudication in Bankruptcy.
2. Petition of General Food Sales Co., Inc. to Intervene.
3. Order Allowing Intervention.
4. Praecipe for Second Supplemental Transcript of Record.

EDWARD F. STERN

On Behalf of Stern & Stern,
and Bogle, Bogle & Gates,
attorneys for H. E. Warner,
Trustee of the above named
Bankrupt—Appellant.

Service of the above Praeceptum admitted this 29th day of January, 1937.

J. SPEED SMITH &
HENRY ELLIOTT, JR. &
C. A. SCHNEIDER

Attorneys for the Claimants
—Appellees.

[Endorsed]: Filed Jan. 30, 1937.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, UNITED STATES
DISTRICT COURT, TO TRANSCRIPT OF
RECORD.

I, EDGAR M. LAKIN, Clerk of the United States District Court for the Western District of Washington, do hereby certify, this typewritten transcript of record, to be a full, true, correct, and complete copy of so much of the record, papers and other proceedings in the above and foregoing cause as is required by second supplemental praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the second supplemental record on appeal herein from the judgment of the said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant herein for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Act of Feb. 11, 1925) for making record, certificate or return, 25 folios at 15¢.....	\$3.75
Certificate of Clerk to Transcript of record50
	—————
	\$4.25

I hereby certify that the above cost for preparing and certifying second supplemental record, amounting to \$4.25 has been paid to me by attorney for appellant.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 30th day of January, 1937.

[Seal]

EDGAR M. LAKIN

Clerk of United States District Court, Western District of Washington.

By F. W. MOSES
Deputy.

[Endorsed]: Filed Feb. 1, 1937. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

ADJUDICATION OF BANKRUPTCY AND
ORDER OF REFERENCE.

(Clerk's Forms 12 and 14 Combined)

At Seattle, in said District, on the Fourth day of October, A. D. 1934, before the Honorable JOHN C. BOWEN, Judge of said Court in Bankruptcy, the petition of RICHARDSON & HOLLAND, INC., a Washington corporation; PRATT-LOW PRESERVING COMPANY, a California corporation; SEATTLE GLOVE COMPANY, a Washington corporation; and the intervening petition of GENERAL FOOD SALES CO. INC., a corporation, that PUGET SOUND QUALITY STORES, INCORPORATED, a Washington corporation, be adjudged a bankrupt, within the true intent and meaning of the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said PUGET SOUND QUALITY STORES, INCORPORATED, a Washington corporation, is hereby declared and adjudged a bankrupt accordingly.

IT IS THEREFORE ORDERED, That upon the petition filed in this Court against said bankrupt on the 20th day of September, A. D. 1934, and intervening petition filed Sep. 24, 1934, said matter be referred to Honorable Ben L. Moore, one of the Referees in Bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said PUGET SOUND QUAL-

ITY STORES, INCORPORATED shall attend before said Referee on the 5th day of October, 1934, at 1203 Smith Tower, Seattle and thenceforth shall submit to such orders as may be made by said Referee or by this Court relating to said involuntary bankruptcy.

WITNESS the Honorable JOHN C. BOWEN, Judge of the said Court, and the seal thereof, at Seattle, in said District, on the 4th day of October, A. D. 1934.

[Seal of the Court]

ED M. LAKIN,

Clerk

By F. W. MOSES,

Deputy Clerk.

Enter:

JOHN C. BOWEN,
District Judge.

Approved:

BOGLE, BOGLE & GATES and
STERN & STERN
Attorneys for petitioning and
intervening Creditors.

As to form only

ROBERTS & SKEEL
Attorneys for Bankrupt.

[Endorsed]: Filed Oct. 4, 1934.

[Title of Court and Cause.]

ORDER AMENDING RECORDS IN RESPECT
TO NAME OF BANKRUPT.

It having been made to appear to this Court from the files and records in this proceeding that the name of the bankrupt corporation has been incorrectly written in all the papers filed in this action, in that while the true and legal name of said corporation is PUGET SOUND QUALITY STORES, the name has been written as Puget Sound Quality Stores, Incorporated; now, therefore,

IT IS HEREBY ORDERED, that the name of PUGET SOUND QUALITY STORES be substituted in the place of Puget Sound Quality Stores, Incorporated, as the real, correct and legal name of the bankrupt in this cause, and that all the papers filed in this action, and the records both in this Court and in the office of Ben L. Moore, Referee in Bankruptcy of this Court to whom this case was referred, be corrected and amended accordingly, and that hereafter in all files and records both in this Court and in the office of the Referee the name of the bankrupt corporation be written as "PUGET SOUND QUALITY STORES".

Entered at Seattle this 30th day of October, 1934.

JOHN C. BOWEN,

District Judge.

[Endorsed]: Filed Oct. 30, 1934.

[Title of Court and Cause.]

ORDER APPOINTING TRUSTEE.

This being the day appointed for the first meeting of creditors under said bankruptcy, of which due notice has been given, the undersigned Referee of said Court in Bankruptcy sat pursuant to such notice to take the proofs of debt, and for the choice of trustee under the said bankruptcy, and he does hereby certify that the creditors whose claims had been allowed and were present, or legally represented, unanimously elected H. E. WARNER of Seattle in said District, as trustee of said bankrupt estate, and fixed the penalty of his bond in the sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) which action was approved by said Referee and this order made and filed accordingly.

Dated at Seattle, in said District, this 29th day of October, 1934.

BEN L. MOORE

Referee in Bankruptcy.

Filed this 29 day of Oct. 1934 at 4 o'clock p. m.
Ben L. Moore, Referee.

[Endorsed]: Filed Jan. 23, 1937.

[Title of Court and Cause.]

ORDER APPROVING BOND.

It appearing that H. E. WARNER of Seattle, in said District, has been duly appointed trustee of

the estate of the above named bankrupt and has given bond with sureties for the faithful performance of his official duties in the amount fixed by the creditors and by order of the court in the sum of Twenty-five Thousand Dollars (\$25,000.00),

It is ORDERED that said bond be and the same is hereby approved.

Dated at Seattle, in said District, this 31st day of October, 1934.

BEN L. MOORE,
Referee in Bankruptcy.

Filed this 31 day of Oct, 1934 at 9:35 o'clock a. m.
Ben L. Moore, Referee.

[Endorsed]: Filed Jan. 23, 1937.

[Title of Court and Cause.]

PRAECIPE FOR SUPPLEMENTAL TRAN-
SCRIPT OF RECORD.

To the Clerk of the United States District Court
for the Western District of Washington,
Northern Division:

You are hereby requested to make a supplemental transcript of record to be filed in the United States Circuit Court of Appeals for the 9th Circuit, pursuant to an appeal allowed in the above entitled proceeding and to include in such supplemental transcript, the following:

1. Adjudication of Bankruptcy and Order of Reference.

2. Order Amending Records in respect to name of Bankrupt.
3. Order Appointing Trustee.
4. Order Approving Trustee's Bond.
5. Praecipe for Supplemental Transcript of Record.

EDWARD F. STERN,

On Behalf of Stern & Stern, and Bogle, Bogle & Gates, attorneys for H. E. Warner, Trustee of the above named Bankrupt—Appellant

Service of the above Praecipe admitted this 22nd day of January, 1937.

J. SPEED SMITH, and
HENRY ELLIOTT, JR., and
G. A. SCHNEIDER,

Attorneys for the Claimants—Appellees.

[Endorsed]: Filed Jan. 22, 1937.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, UNITED STATES DISTRICT COURT, TO TRANSCRIPT OF RECORD.

I, EDGAR M. LAKIN, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing cause as is required by supplemental praecipe of

[Title of Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW.

To the Honorable John C. Bowen, District Judge:

I, Ben L. Moore, Referee in Bankruptcy in charge of this proceeding, do hereby certify that in the course of such proceeding an order was made and entered herein on December overruling the trustee's objections and allowing the claims of R. E. Schoner, C. P. Ainsworth, J. E. Roullard and O. M. Freeborg.

The trustee, feeling aggrieved at said order, filed within the time limited by law a petition for review, setting forth therein the errors of which he complained.

Claimants, members of the bankrupt co-operative corporation, by their claims as creditors herein, assert that the bankrupt is indebted to them for certain sums paid by them to the bankrupt as a so-called credit reserve fund.

The trustee objected, in substance, to the payment of any dividend to said claimants until all the creditors who have filed proofs of debt in this proceeding (except all "credit reserve" claims) are paid in full.

It is the Referee's order overruling these objections which the petitioner now seeks to review.

SUMMARY OF THE EVIDENCE.

Said order of the Referee was based upon the facts set forth in the written stipulation between

the attorneys for the trustee and the attorneys for the claimants, which said written stipulation is transmitted herewith, and, by reference thereto, is incorporated herein as a part of this certificate.

QUESTION ON REVIEW.

The following question is presented for review: Are the claims of claimants subordinate to the claims of other general creditors, and should such other general creditors be paid in full before any payment is made to claimants?

PAPERS TRANSMITTED.

I transmit herewith for the information of the Judge the following papers:

(1) Proof of Claim No. 321 of R. E. Schoner, to which is attached the trustee's objections to the following claims, to-wit:

No. 321 of R. E. Schoner

No. 327 of C. P. Ainsworth

No. 330 of J. E. Roullard

No. 338 of O. M. Freeborg

(2) Proof of Claim No. 327 of C. P. Ainsworth

(3) Proof of Claim No. 330 of J. E. Roullard

(4) Proof of Claim No. 338 of O. M. Freeborg.

(5) Stipulation of facts filed herein December 3, 1936, made by and between H. E. Warner, trustee of the bankrupt, through his attorneys, Stern & Stern and Bogle, Bogle & Gates, and the claimants, R. E. Schoner, C. P. Ainsworth, J. E. Roul-

lard, and O. M. Freeborg, through their attorneys, C. A. Schneider and Henry Elliott, Jr.

(6) Referee's order overruling objections to claims.

(7) Petition for review.

Dated at Seattle, in said District, December 8, 1936.

BEN L. MOORE

Referee in Bankruptcy.

[Endorsed]: Filed Dec. 9, 1936.

[Title of Court and Cause.]

TRUSTEE'S OBJECTIONS TO CLAIMS
OF CERTAIN CREDITORS.

Comes now H. E. Warner, as trustee of the above named bankrupt and objects to the allowance of the claims hereinafter set forth which have heretofore been filed by the following persons:

No.	Name and Address	Filed by	Amount
321	R. E. Schoner	Elliott & Schneider	\$536.94
327	C. P. Ainsworth	“	“
330	J. E. Roullard	“	“
330	J. E. Roullard	“	“

The grounds of objection to the foregoing claims are as follows: Each and every claim above mentioned recites that the consideration was money paid to the bankrupt for "Credit Reserve". The said claimants were stockholders in the bankrupt corporation, and the money so contributed by them to the "Credit Reserve" fund was in fact and in law

a contribution to the capital fund of the corporation upon which fund the creditors were entitled to rely as security for the payment of the obligations of the bankrupt corporation; the claims of all of said claimants are based upon their investment as stockholders in said corporation, and they are not entitled to any return thereon until all the creditors who have filed proofs of debt in this proceeding (except all "Credit Reserve" claims) are paid in full. That said "Credit Reserve" fund, and all contributions made thereto were made for the purpose of creating a fund to pay any and all losses of the corporation which might accrue in the operation of its business; that there are now losses far in excess of the total amount of the "Credit Reserve" fund, and that said "Credit Reserve" fund has been and should be applied as against such losses.

WHEREFORE, the trustee prays that said claims be disallowed, or in the alternative subordinated to all claims of other creditors filed and allowed herein, except other "Credit Reserve" claims.

H. E. WARNER

Trustee

STERN & STERN

Attorneys for Trustee

BOGLE, BOGLE & GATES

Attorneys for Trustee

State of Washington,
County of King—ss.

H. E. WARNER being first duly sworn on oath deposes and says: that he is the trustee above named; that he has read the foregoing objections, knows the contents thereof, and believes the same to be true.

H. E. WARNER

Subscribed and sworn to before me this 26th day of August, 1936.

[Notarial Seal] EDWARD F. STERN
Notary Public in and for the State of Washington,
residing at Seattle.

[Title of Court and Cause.]

E-321

PROOF OF UNSECURED CLAIM AND
PROOF OF ATTORNEY.

At the City of Seattle, in Western District in the County of King, State of Washington, on the 7th day of December, A. D. 1934, personally came R. E. Schoner, of the City of Bothell, County of King, State of Washington, in the District of Western, and made oath and says:

That the person by or against whom the petition for adjudication of bankruptcy has been filed in the above entitled court and matter, was, at and before the filing of said petition, and still is justly

and truly indebted to R. E. Schoner, of the City of Bothell, State of Washington, in the full and just sum of \$536.94 Five Hundred Thirty Six and 94/100 Dollars and that the consideration of said debt is as follows: Credit reserve accumulated.

That the statement of the said indebtedness is hereto annexed and by this reference is made a part of this deposition, and that said debt became due, will become due, the average due date is delinquent June 1, 1936; That no part of said debt has been paid, except the sum of none Dollars; that there are no offsets or counter-claims to the same, except none. That no note, or other evidence of indebtedness, has been given by the said debtor, and no note has been received by said creditor, and no judgment recovered for, or on account of, the amount of said claim; and that said creditor has not, nor has any person by order of the said creditor, or to the knowledge or belief of the deponent, received any manner of security for said debt whatsoever.

That affiant makes this affidavit for and on behalf of said claimant, and for said claimant's use in asserting his claim against the above entitled bankrupt.

If Corporation:

Deponent further says that he is the Treasurer of said.....which is a corporation

(Name of Creditor)

incorporated by and under the laws of the State of _____, and carrying on business at _____, in the County of _____, State of _____, and that he is duly authorized to make this proof _____.

Individual:

Deponent further says that he is one of the partnership firm of (signed) R. E. SCHONER, con- (Name of Creditor) sisting of himself and _____ of _____, carrying on business in the City of Bothell, State of _____.

LETTER OF ATTORNEY

To.....

You or either of you, or your representatives, are hereby authorized by said creditor, by the person making the foregoing deposition, who is duly authorized thereto, to appear for and represent said creditor and vote for said creditor in any proceedings, or meetings, which may be made or called in the above entitled proceeding, in court, before the Referee in Bankruptcy, or elsewhere, and particularly to vote for said creditor in choice of a trustee of said bankrupt, whenever such election be held, to accept, or in your discretion oppose confirmation of any composition offered by or on behalf of said bankrupt, and to receive and receipt for any and all moneys which may be or may become payable to said creditor therein, or for or on account of said debt.

In witness whereof said creditor has hereunto signed his name and affixed his seal when signing

the deposition preceding the 7th day of December, 1934.

(Signed) R. E. SCHONER

(Person executing should sign his individual name here)

.....
(Also sign firm or corporate name here)

By.....

(Treasurer or partner)

Subscribed and sworn to and acknowledged before me this 7th day of December, 1934, the person is personally known to me or has been identified.

[Notarial Seal] (Signed) R. M. BEAMER

Notary Public

If Corporation

Imprint Seal Here

- (*) Do not fail to attach itemized statement of account.
- (*) If creditor a corporation, proof of debt must be made by Treasurer, or person performing equivalent duties.
- (*) If creditor a co-partnership, proof of debt must be made by some member of the firm.

Filed this 21st day of January, 1935. Ben L. Moore, Referee.

[Title of Court and Cause.]

PROOF OF UNSECURED CLAIM AND
PROOF OF ATTORNEY

At the City of Seattle, in Western District in the County of King, State of Washington, on the 6th day of December, A. D. 1934, personally came C. P. Ainsworth, of the City of Port Orchard, County of Kitsap, State of Washington, in the District of Western, and made oath and says:

That the person by or against whom the petition for adjudication of bankruptcy has been filed in the above entitled court and matter, was, at and before the filing of said petition, and still is justly and truly indebted to C. P. Ainsworth, of the City of Port Orchard, State of Washington, in the full and just sum of Six Hundred Sixty and $91/100$ (\$660.91) Dollars and that the consideration of said debt is as follows: Accumulated Credit Reserve.

That the statement of the said indebtedness is hereto annexed and by this reference is made a part of this deposition, and that said debt became due, will become due, the average due date is delinquent June 1, 1931; That no part of said debt has been paid, except the sum of None Dollars; that there are no offsets or counter-claims to the same, except None That no note, or other evidence of indebtedness, has been given by the said debtor, and no note has been received by said creditor, and no judgment recovered for, or on account of, the

amount of said claim; and that said creditor has not, nor has any person by order of the said creditor, or to the knowledge or belief of the deponent, received any manner of security for said debt whatsoever.

That affiant makes the affidavit for and on behalf of said claimant, and for said claimant's use in asserting his claim against the above entitled bankrupt.

If Corporation:

Deponent further says that he is the Treasurer of said.....which is a corpora-

(Name of Creditor)

tion incorporated by and under the laws of the State of....., and carrying on business at....., in the County of....., State of....., and that he is duly auhtorized to make this proof.....

Individual:

Deponent further says that he is one of the partnership firm of (Signed) C. P. Ainsworth, consist-

(Name of Creditor)

ing of himself and.....of....., carrying on business in the City of....., State of.....

.....

LETTER OF ATTORNEY

To.....

You or either of you, or your representative, are hereby authorized by said creditor, by the person making the foregoing deposition, who is duly authorized thereto, to appear for and represent said creditor and vote for said creditor in any pro-

ceedings, or meetings, which may be made or called in the above entitled proceeding, in court, before the Referee in Bankruptcy, or elsewhere, and particularly to vote for said creditor in choice of a trustee of said bankrupt, whenever such election be held, to accept, or in your discretion oppose confirmation of any composition offered by or on behalf of said bankrupt, and to receive and receipt for any and all moneys which may be or may become payable to said creditor therein, or for or an account of said debt.

In witness whereof said creditor has hereunto signed his name and affixed his seal when signing the deposition preceding the 6th day of December, 1934.

(Signed) C. P. AINSWORTH

(Person executing should sign his individual name here)

.....
(Also sign firm or corporate name here)

By

(Treasurer or partner)

Subscribed and sworn to and acknowledged before me this 6th day of December, 1934, the person is personally known to me or has been identified.

[Notarial Seal] (Signed) R. M. BEAMER

Notary Public

(If Corporation imprint Seal here)

(*) Do not fail to attach itemized statement of account.

(*) If creditor a corporation, proof of debt must be made by Treasurer, or person performing equivalent duties.

(*) If creditor a co-partnership, proof of debt must be made by some member of the firm.

Filed this 21st day of January, 1935. Ben L. Moore, Referee.

[Title of Court and Cause.]

E-330

PROOF OF UNSECURED CLAIM AND
PROOF OF ATTORNEY

At the City of Seattle, in Western District in the County of King, State of Washington, on the 7th day of December, A. D. 1934, personally came J. E. Roullard, of the City of Seattle, County of King, State of Washington, in the District of Western, and made oath and says:

That the person by or against whom the petition for adjudication of bankruptcy has been filed in the above entitled court and matter, was at and before the filing of said petition, and still is justly and truly indebted to J. E. Roullard, of the City of Seattle, State of Washington, in the full and just sum of \$587.61 Five Hundred Eighty-seven and 61/100 Dollars and that the consideration of said debt is as follows: Credit Reserve Accumulated.

That the statement of the said indebtedness is hereto annexed and by this reference is made a part of this deposition, and that said debt became due, will become due, the average due date is delinquent June 1, 1931; That no part of said debt has been paid, except the sum of None Dollars;

that there are no offsets or counter-claims to the same, except None That no note, or other evidence of indebtedness, has been given by the said debtor, and no note has been received by said creditor, and no judgment recovered for, or on account of, the amount of said claim; and that said creditor has not, nor has any person by order of the said creditor, or to the knowledge or belief of the deponent, received any manner of security for said debt whatsoever.

That affiant makes this affidavit for and on behalf of said claimant, and for said claimant's use in asserting his claim against the above entitled bankrupt.

If Corporation:

Deponent further says that he is the Treasurer of said.....which is a corpora-

(Name of Creditor)

tion incorporated by and under the laws of the State of....., and carrying on business at....., in the County of....., State of....., and that he is duly authorized to make this proof.....

Individual:

Deponent further says that he is one of the partnership firm of (Signed) J. E. Roullard, consist-

(Name of Creditor)

ing of himself and.....of....., carrying on business in the City of....., State of.....

.....

LETTER OF ATTORNEY

To.....

You or either of you, or your representatives, are

hereby authorized by said creditor, by the person making the foregoing deposition, who is duly authorized thereto, to appear for and represent said creditor in any proceedings, or meetings, which may be made or called in the above entitled proceeding in court before the Referee in Bankruptcy, or elsewhere, and particularly to vote for said creditor in choice of a trustee of said bankrupt, whenever such election is held, to accept, or in your discretion oppose confirmation of any composition offered by or on behalf of said bankrupt, and to receive and receipt for any and all moneys which may be or may become payable to said creditor therein, or for or on account of said debt.

In witness whereof said creditor has hereunto signed his name and affixed his seal when signing the deposition preceding the 10th day of December, 1934.

(Signed) J. E. ROULLARD

(Person executing should sign his individual name here)

.....
(Also sign firm or corporate name here)

By

(Treasurer or partner)

Subscribed and sworn to and acknowledged before me this 10th day of December, 1934, the person is personally known to me or has been identified.

[Notarial Seal] (Signed) R. M. BEAMER

Notary Public

(If Corporation imprint Seal here)

(*) Do not fail to attach itemized statement of account.

- (*) If creditor a corporation, proof of debt must be made by Treasurer, or person performing equivalent duties.
- (*) If creditor a co-partnership, proof of debt must be made by some member of the firm.

Filed this 21st day of January, 1935. Ben L. Moore, Referee.

[Title of Court and Cause.]

PROOF OF UNSECURED CLAIM AND
LETTER OF ATTORNEY.

At the City of Seattle, in Western District in the County of King, State of Washington, on the 11th day of December, A. D. 1934, personally came O. M. Freeborg, of the City of Seattle, County of King, State of Washington, in the District of Western, and made oath and says:

That the person by or against whom the petition for adjudication of bankruptcy has been filed in the above entitled court and matter, was, at and before the filing of said petition, and still is justly and truly indebted to Superior Public Market Inc., of the City of Seattle, State of Washington, in the full and just sum of Five Hundred Fifty-eight and 32/100 (\$558.32) Dollars and that the consideration of said debt is as follows: Accumulated Credit Reserve.

That the statement of the said indebtedness is hereto annexed and by this reference is made a part of this deposition, and that said debt became

due, will become due, the average due date is delinquent June 1, 1931; That no part of said debt has been paid, except the sum of None Dollars; that there are no offsets or counter-claims to the same, except None That no note, or other evidence of indebtedness, has been given by the said debtor, and no note has been received by said creditor, and no judgment recovered for, or on account of, the amount of said claim; and that said creditor has not, nor has any person by order of the said creditor, or to the knowledge or belief of the deponent, received any manner of security for said debt whatsoever.

That affiant makes this affidavit for and on behalf of said claimant, and for said claimant's use in asserting their claim against the above entitled bankrupt.

If Corporation:

Deponent further says that he is the Treasurer of said Superior Public Mkt. Inc. which is a corporation incorporated by and under the laws of the State of Washington, and carrying on business at Seattle, in the County of King, State of Wash., and that he is duly authorized to make this proof.....

If Partnership:

Deponent further says that he is one of the partnership firm of.....consisting
 (Name of Creditor)
 of himself and.....of, carrying on business in the City of....., State of.....

LETTER OF ATTORNEY

To.....

You or either of you, or your representatives, are hereby authorized by said creditor, by the person making the foregoing deposition, who is duly authorized thereto, to appear for and represent said creditor and vote for said creditor in any proceedings, or meetings, which may be made or called in the above entitled proceeding, in court, before the Referee in Bankruptcy, or elsewhere, and particularly to vote for said creditor in the choice of a trustee of said bankrupt, whenever such election be held, to accept, or in your discretion oppose confirmation of any composition offered by or on behalf of said bankrupt, and to receive and receipt for any and all moneys which may become payable to said creditor therein, or for or on account of said debt.

In witness whereof said creditor has hereunto signed his name and affixed his seal when signing the deposition preceding the 11th day of December, 1934.

(Signed) O. M. FREEBORG

(Person executing should sign his individual name here)

[Corporate Seal]

SUPERIOR PUBLIC MARKET INC.

(Also sign firm or corporate name here)

By (Signed) O. M. FREEBORG

Sec. Treas.

(Treasurer or partner)

Subscribed and sworn to and acknowledged before me this 11th day of December, 1934, that the

above named claimants shall be determined upon the following stipulated facts:

I.

The bankrupt, Puget Sound Quality Stores, was incorporated on the 10th day of March, 1930, as a co-operative Association under the laws of the State of Washington for the purpose of dealing in groceries and merchandise upon a non-profit co-operative basis for the benefit of its members or shareholders. The capital stock consisted of \$500 divided into 500 shares of the par value of \$1 per share.

II.

The by-laws, adopted at the first meeting of incorporators and Trustees on March 10, 1930, and approved by all of the member shareholders, provided in Article XV, as follows:

“Sec. 1. One percent (1%) shall be added to all statements for the purpose of creating a credit reserve fund. Said one percent (1%) shall be credited to each member’s reserve fund account and shall be returnable with interest upon the member ceasing to be a member of the Association; less, however, a pro rata percentage of loss sustained by the Association on account of losses or credit extended to members of the Association”.

“Sec. 2. The member’s surplus account shall be a guaranty of his account with the Association, it being understood that said reserve fund shall be

used to guarantee the accounts of all members with the Association who receive credit”.

“Sec. 3. Statements shall be issued to members on the 1st and 15th of each month for goods purchased through or from the Association. The statement of the first of the month shall be delinquent on the 12th of the month, and the statement of the 15th of the month shall become delinquent on the 25th. Credit shall be refused to any member who shall have two such statements unpaid and such credit shall not be renewed until the delinquent accounts of the member are paid. All delinquent accounts will draw penalties of one percent (1%) per week”.

III.

Upon its incorporation, the bankrupt engaged in the business for which it was organized and continued the same until the appointment of a State court receiver in July, 1934. On September 20th, 1934, an involuntary petition in bankruptcy was filed in the above entitled court and on the 4th day of October, 1934, Puget Sound Quality Stores was adjudicated a bankrupt. In the regular course of the bankrupt's business carried on prior to the appointment of the State court receiver, it purchased merchandise in quantity from manufacturers and jobbers and in turn sold it out in lesser quantities to its member-shareholders who were engaged in the retail grocery business.

IV.

Prior to May 30th, 1931, but not thereafter, the

bankrupt added for the credit reserve fund, one percent (1%) to the amount of each statement for each bill of merchandise sold by it to its members. The amount of said one percent (1%) so contributed by each member was credited to his individual credit reserve account in the books of the company.

V.

Each claimant whose claim is now under consideration (and other claimants similarly situated) is a member of Puget Sound Quality Stores, holding one share of stock and has paid into the credit reserve fund, under the provisions of the by-laws above quoted, in the course of business as aforesaid, prior to May 30th, 1931, and has been credited therefor in his individual reserve fund account, the following respective amounts:

R. E. Schoner	\$536.94
C. P. Ainsworth	660.91
J. E. Roullard	587.61
O. M. Freeborg	558.32

for which amounts each of said claimants has filed a general claim against the Estate of the bankrupt, and to which claims the Trustee has filed objections.

VI.

The Board of Trustees of the bankrupt, on June 30th, 1930, adopted a resolution in words as follows:

“Whereas the Puget Sound Quality Stores has accumulated a credit reserve fund for the

purpose of covering losses and it is deemed advisable by the Trustees that the investment of this fund in merchandise be discontinued and said fund kept in a liquid state; and the Trustees being desirous of getting a fair return on this fund while still keeping it in a liquid condition in order to fulfill the purpose for which it was created, now,

Therefore, be it **RESOLVED** that the officers of this corporation be and are hereby authorized to withdraw its credit reserve fund from its merchandise investment and loan the same from time to time for such period and at such interest as they may deem advisable, keeping in view the fact that said credit reserve funds should be available upon short notice at all times”.

The original draft of the minutes has been mutilated by inking and obliterating a word or words following and qualifying the said word “losses”. Such mutilation was done by those having charge and custody of the corporate records and without the knowledge or consent of claimants.

VII.

Upon the authority of that resolution, the officers loaned money from the funds of the corporation to Trade Discount Corporation from time to time during 1930 and 1931, taking the latter’s notes and renewal notes. On December 31, 1931, the bankrupt held such notes of Trade Discount Corporation in the total sum of approximately \$45,000.

VIII.

The credit reserve fund of the bankrupt was deposited in the same bank account with other funds. The bankrupt operated at a loss in the years 1930 and 1931 and its funds in the bank were drawn upon from time to time to pay such losses.

IX.

The minutes of the meeting of the Board of Trustees of the bankrupt held May 11, 1931, show the following, to-wit:

“The following resolution was duly offered, seconded and unanimously adopted.

Be it RESOLVED that the by-laws of this association be amended by striking therefrom sections 1 and 2 of Article XV, and that said amendments be made to take effect June 1, 1931.

A motion was made, seconded and unanimously adopted that one percent (1%) be added to the cost of merchandise in fixing the selling price of the same, and that the proceeds thereof be placed in the general funds of the Association”.

X.

Under date of March 30, 1932, an entry was made in the books of the company writing off the credit reserve fund amounting to \$42,561.50 as of date of May 11, 1931. An explanatory note under said entry recites that this charge off was made as of May 31, 1931, pursuant to action of the board of Trus-

tees of June (year not stated) and of April 5, 1932.

XI.

The minutes of the meeting of the Board of Trustees held April 5, 1932, reads in part as follows:

“Upon motion by Mr. Kelly, seconded by Mr. Brown, the management was instructed to charge the entire deficit as of May 31, 1931 against the credit reserve as of that date, subject to the opinion of our attorneys as to this action. It was unanimously carried”.

XII.

The said book entry referred to in Paragraph X hereof is false and erroneous in that it bears a date prior to the date of the authorization cited to support it.

XIII.

The claimants neither knew of nor consented to the action of the board of Trustees at their said meetings of May 11, 1931, June 30, 1930, or April 5, 1932, nor the aforementioned book entry dated March 30, 1932, and neither knew of nor consented to any attempted change in the text or construction of the original by-laws governing credit reserves or any change or amendment of the original by-laws by any means respecting such reserves.

XIV.

Certain member-shareholders, including some of the claimants herein, having complained about the

management of the affairs of the corporation were then assured by Manager Bishop in February, 1931, that they had, under the by-laws, a right to their proportionate share of the credit reserve when they withdrew from the organization.

XV.

All of the manufacturers' claims against the bankrupt are based upon merchandise purchased within 60 days to 90 days prior to the receivership—the bulk of it within 10 days prior thereto.

XVI.

Several years ago, from time to time, the officers of the bankrupt discussed its credit, ability, financial standing and responsibility with its creditors who were selling goods to it. The last of said discussions was with the Gold Dust Corporation or the K. C. Baking Powder people, about 4 to 6 months prior to charging off the credit reserve fund.

XVII.

The officers of the bankrupt did not represent to manufacturers that in case of an operating deficit the company could reach in and take out of the credit reserve fund money to pay said manufacturers. No present creditor of the bankrupt extended credit to it on the basis of the credit reserve fund being or having been available for the general debts of the corporation or upon the basis of the corporation being free from liability to the member shareholders for the return of the funds contributed by them to the credit reserve fund.

XVIII.

The bankrupt is indebted to each of the claimants on account of his credit reserve in the respective amounts shown in Paragraph V of this stipulation of facts.

XIX.

The assets of the bankrupt which the trustee has completely reduced to cash, are insufficient to pay in full the general claims of creditors whose claims have been filed and allowed, other than and exclusive of the claims of the credit reserve claimants whose claims have been filed herein.

STERN & STERN,

BOGLE, BOGLE & GATES,

Attorneys for Trustee.

J. SPEED SMITH &

HENRY ELLIOTT, JR.,

C. A. SCHNEIDER,

Attorneys for Claimants.

[Endorsed]: Filed Dec. 9, 1936.

[Title of Court and Cause.]

ORDER OVERRULING OBJECTIONS TO
CLAIMS OF R. E. SCHONER, C. P. AINS-
WORTH, J. E. ROULLARD and O. M.
FREEBORG.

This matter came on regularly for hearing this day before the undersigned Referee in Bankruptcy, upon the trustee's objections to the claims herein-after set forth, the Trustee appearing through his

attorneys Stern & Stern and Bogle, Bogle & Gates and the claimants appearing through their attorneys C. A. Schneider and Henry Elliott, Jr. A written stipulation of facts having been filed herein by the parties hereto and the court having carefully considered the same, and being fully advised in the premises, now concludes:

1. That the original by-laws of the bankrupt provided for the creation of a credit reserve fund for the purpose of protecting the bankrupt from losses sustained through extending credit to members of the bankrupt, but not for the purpose of protecting the bankrupt from other losses.

2. That under said by-laws, the credit reserve fund was applicable to the payment of losses sustained through extending credit to members of the bankrupt, but was not applicable to any other loss, debt, or expense.

3. That under said by-laws the bankrupt became indebted to each member for the amount of his contribution to the credit reserve fund less certain deductions, mentioned in the next succeeding paragraph, and was obliged to pay said amount with interest to such member upon his ceasing to be a member.

4. That under said by-laws, the only deductions which could be made from any member's credit reserve fund were deductions for the retiring member's proportionate share of losses sustained through extension of credit to members. No deductions could be made for any other debtor or expense.

5. That on May 31, 1931, the bankrupt was indebted to the claimants on account of their credit reserve fund contributions in the following respective amounts:

R. E. Schoner	\$536.94
C. P. Ainsworth	660.91
J. E. Roullard	587.61
O. M. Freeborg	558.32

and said indebtedness has remained in the same amounts to the present time.

6. That no change or attempted change of by-laws respecting the credit reserve fund which was accumulated prior to May 31, 1931 was binding on these claimants and no such change or attempted change was effective to discharge or reduce the said indebtedness to claimants.

7. That the book entries under date of March 30, 1932, and the actions of the Board of Trustees purporting to support said entries, were made and taken without the consent of claimants and without legal right, and were not binding on claimants, and were ineffective to discharge or modify the aforesaid liability of the bankrupt to claimants.

8. That none of the general creditors extended credit to the bankrupt upon the basis of the credit reserve fund, and neither such creditor nor the Trustee is entitled to challenge the claims of parity of these claimants upon the ground of estoppel or otherwise.

9. That the bankrupt is now indebted to the

claimants in the respective amounts hereinabove set forth.

10. That the claimants are on a parity with all other general unsecured creditors and are entitled to have their claims allowed and dividends paid thereon accordingly.

Now therefore, IT IS ORDERED, ADJUDGED AND DECREED, that the Trustee's objections to the following claims, to-wit:

No.	Name	Amount
321	R. E. Schoner	\$536.94
327	C. P. Ainsworth	660.91
330	J. E. Roullard	587.61 BLM
338	O. M. Freeborg	558.32

be and they are hereby overruled.

To the foregoing order the Trustee excepts and his exceptions are allowed.

Dated at Seattle, Washington, this 3rd day of December, 1936.

BEN L. MOORE,
Referee in Bankruptcy.

Filed this 3 day of Dec. 1936, at 11:40 A.M., Ben L. Moore, M, Referee.

O. K. as to form.

J. SPEED SMITH and
HENRY ELLIOTT, JR.,
C. A. SCHNEIDER,
Attorneys for Claimants.
STERN & STERN,
BOGLE, BOGLE, & GATES,
Attorneys for Trustee.

[Endorsed]: Filed Dec. 9, 1936.

[Title of Court and Cause.]

PETITION FOR REVIEW.

To the Honorable Ben L. Moore, Referee in Bankruptcy:

The petition of H. E. Warner, trustee herein respectfully shows to the court:

I.

That H. E. Warner is the duly qualified and acting trustee of the above named bankrupt.

II.

That the following claims have been filed in the above entitled proceeding, to wit: R. E. Schoner, C. P. Annsworth, J. E. Roullard and O. M. Freeborg.

III.

That subsequent to the filing of said claims, the trustee filed objections thereto and hearing has been had thereon. That the Referee made and entered herein an order on the 3rd day of December, 1936. That a true and correct copy of said order is hereto attached, marked, "Exhibit A", and made a part of this petition as though fully set forth herein at length.

IV.

That said order was and is erroneous in the following particulars, to wit:

That the stipulated facts considered at the hearing upon said claims disclosed that the bankrupt suffered losses in the operation of its business far greater in amount than the total amount of the "Credit Reserve" fund created by the various mem-

bers of the bankrupt association, of which the claimants above listed were members, and that therefore long prior to the bankruptcy proceedings the total "Credit Reserve" was entirely used to take care of such losses, and no part thereof was at the time of the adjudication nor at any time since, due to the various claimants hereinabove designated. That the court erred in holding that the "Credit Reserve" created by the bankrupt was subject only to losses for credit extended to members of the association in that no amount should be allowed to any of the claimants above designated due to the fact that the "Credit Reserve" was created for the purpose of and should be applied to all losses of the bankrupt corporation and not only to credit losses resulting by reason of credit extended to members of the association.

WHEREFORE, petitioner feeling aggrieved because of such order prays that the same be reviewed as provided for in the bankruptcy acts of the United States with amendments thereto and under General Order XXVII.

Dated at Seattle, Washington, this 4th day of December, 1936.

H. E. WARNER

Trustee.

United States of America,
Western District of Washington,
County of King—ss.

H. E. WARNER, being first duly sworn, on oath deposes and says:

That he is the trustee above named; that he has read the foregoing petition, knows the contents thereof and believes the same to be true.

H. E. WARNER

Subscribed and sworn to before me this 4th day of December, 1936.

[Seal]

EDWARD F. STERN

Notary Public in and for the State of Washington,
residing in Seattle.

E Filed this 7 day of Dec. 1936. at 3 o'clock.

P. M., Ben L. Moore, Referee, M

Copy received and service of same admitted this 5th day of December, 1936.

C. A. SCHNEIDER

HENRY ELLIOTT, JR.

Attorneys for Claimants.

[Endorsed]: Filed Dec. 9, 1936.

[Title of Court and Cause.]

ORDER OVERRULING OBJECTIONS TO
CLAIMS OF R. E. SCHONER, C. P. AINS-
WORTH, J. E. ROULLARD AND O. M.
FREEBORG.

This matter came on regularly for hearing this day before the undersigned Referee in Bankruptcy, upon the trustee's objections to the claims hereinafter set forth, the Trustee appearing through his attorneys Stern & Stern and Bogle, Bogle & Gates and the claimants appearing through their attorneys C. A. Schneider and Henry Elliott, Jr. A writ-

ten stipulation of facts having been filed herein by the parties hereto and the court having carefully considered the same, and being fully advised in the premises, now concludes:

1. That the original by-laws of the bankrupt provided for the creation of a credit reserve fund for the purpose of protecting the bankrupt from losses sustained through extending credit to members of the bankrupt, but not for the purpose of protecting the bankruptcy from other losses.

2. That under said by-laws, the credit reserve fund was applicable to the payment of losses sustained through extending credit to members of the bankrupt, but was not applicable to any other loss, debt, or expense.

3. That under said by-laws the bankrupt became indebted to each member for the amount of his contribution to the credit reserve fund less certain deductions, mentioned in the next succeeding paragraph, and was obliged to pay said amount with interest to such member upon his ceasing to be a member.

4. That under said by-laws, the only deductions which could be made from any member's credit reserve fund were deductions for the retiring member's proportionate share of losses sustained through extension of credit to members. No deductions could be made for any other debtor or expense.

5. That on May 31, 1931, the bankrupt was indebted to the claimants on account of their credit

reserve fund contributions in the following respective amounts:

R. E. Schoner	\$536.94
C. P. Ainsworth	660.91
J. E. Roullard	587.61
O. M. Freeborg	558.32

and said indebtedness has remained in the same amounts to the present time.

6. That no change or attempted change of by-laws respecting the credit reserve fund which was accumulated prior to May 31, 1931 was binding on these claimants and no such change or attempted change was effective to discharge or reduce the said indebtedness to claimants.

7. That the book entries under date of March 30, 1932, and the actions of the Board of Trustees purporting to support said entries, were made and taken without the consent of claimants and without legal right, and were not binding on claimants, and were ineffective to discharge or modify the aforesaid liability of the bankrupt to claimants.

8. That none of the general creditors extended credit to the bankrupt upon the basis of the credit reserve fund, and neither such creditor nor the Trustee is entitled to challenge the claims of parity of these claimants upon the ground of estoppel or otherwise.

9. That the bankrupt is now indebted to the claimants in the respective amounts hereinabove set forth.

10. That the claimants are on a parity with all other general unsecured creditors and are entitled to have their claims allowed and dividends paid thereon accordingly.

Now therefore, IT IS ORDERED, ADJUDGED AND DECREED, that the Trustee's objections to the following claims, to wit:

No	Name	Amount
321	R. E. Schoner	\$536.94
327	C. P. Ainsworth	660.91
330	J. E. Roullard	587.61
338	O. M. Freeborg	558.32

be and they are hereby overruled.

To the foregoing order the Trustee excepts and his exceptions are allowed.

Dated at Seattle, Washington, this 3rd day of December, 1936.

BEN L. MOORE

Referee in Bankruptcy.

O. K. as to form.

C. A. SCHNEIDER

HENRY ELLIOTT, JR.

Attorneys for Claimants.

STERN & STERN

BOGLE, BOGLE & GATES

Attorneys for Trustee.

E. Filed this 7 day of Dec. 1936, at 3 o'clock,
P. M. Ben L. Moore, Referee. M

[Endorsed]: Filed Dec. 9, 1936.

In the District Court of the United States, Western District of Washington, Northern Division.

In Bankruptcy—No. 33499.

In the Matter of:

PUGET SOUND QUALITY STORES, a Washington corporation,

Bankrupt.

ORDER CONFIRMING REFEREE'S ORDER
OVERRULING OBJECTIONS TO CLAIMS
OF R. E. SCHONER, ET AL. AND JUDGMENT
ALLOWING SAID CLAIMS.

The above entitled cause came on duly and regularly for hearing on the 14th day of December, 1936 before the above entitled court, the Honorable John C. Bowen, District Judge, presiding, upon the petition of the trustee herein for review of the order of the Honorable Ben L. Moore, Referee in Bankruptcy, made, entered and filed on the 3rd day of December, 1936, overruling the Trustee's objections to the claims of R. E. Schoner—\$536.94; C. P. Ainsworth—\$660.91; J. E. Roullard—\$587.61; O. M. Freeborg—\$558.32; and the court having duly considered the Referee's certificate on review and having heard the arguments and statements of counsel, and at the conclusion thereof having announced his decision, that he would in all respects, approve and affirm the said order of the Referee, it is now by the court

ORDERED that the said order of the Referee in

Bankruptcy allowing said claims be and it is hereby approved and confirmed in all respects.

FURTHER ORDERED, ADJUDGED and DECREED that the claims hereinabove referred to shall be and the same are hereby allowed as general claims against the Estate of the above named bankrupt.

DONE IN OPEN COURT this 14th day of December, 1936.

JOHN C. BOWEN

District Judge.

Presented by:

C. A. SCHNEIDER

Of Attorneys for Claimants.

ORDER ALLOWING EXCEPTION

Counsel for the Trustee herein having in Open Court excepted to the Court's decision and this Order, said exception is hereby allowed.

Done in Open Court this 14th day of December, 1936.

JOHN C. BOWEN

District Judge

Approved as to form:

STERN & STERN

BOGLE, BOGLE & GATES

Attorneys for Trustee.

Presented by:

C. A. SCHNEIDER

Attorney for Claimants.

[Endorsed]: Filed Dec. 14, 1936.

[Title of Court and Cause.]

PETITION FOR APPEAL TO CIRCUIT
COURT OF APPEALS.

To the Honorable Judge of the United States District Court for the Western District of Washington, Northern Division:

Your petitioner H. E. Warner, Trustee in Bankruptcy of Puget Sound Quality Stores, a Washington corporation, bankrupt, conceiving himself aggrieved by the certain order entered on the 14th day of December, 1936, in the above entitled proceedings, confirming the order of the Referee in Bankruptcy overruling objections to the claims of R. E. Schoner, C. P. Ainsworth, J. E. Roullard, and O. M. Freeborg, and allowing said claims as general claims against the estate of the above named bankrupt, does hereby petition for an appeal from the said order to the United States Circuit Court of Appeals for the 9th Circuit, and prays that his appeal may be allowed and that a citation may be granted, directed to R. E. Schoner, C. P. Ainsworth, J. E. Roullard and O. M. Freeborg, commanding them to appear before the United States Circuit Court of Appeals for the 9th Circuit, to do and receive that which may appertain to justice to be done in the premises, and that a transcript of the record and evidence in said proceedings duly authenticated, may be transmitted to the said United States Circuit Court of Appeals for

the 9th Circuit.

H. E. WARNER

Trustee in Bankruptcy of Puget Sound
Quality Stores, a Washington corpo-
ration.

By EDWARD F. STERN

On behalf of Stern & Stern and Bogle,
Bogle & Gates, attorneys for Trustee.

The foregoing appeal is hereby allowed this 21
of December, 1936.

JOHN C. BOWEN

United States District Judge.

Received copy of within Petition this 16th day of
December, 1936.

J. SPEED SMITH and
HENRY ELLIOTT Jr. and
C. A. SCHNEIDER

Attorneys for Claimants

[Endorsed]: Filed Dec. 22, 1936.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes H. E. WARNER, Trustee in Bank-
ruptcy of Puget Sound Quality Stores, a Wash-
ington corporation, bankrupt, appellant, and files
this his assignment of errors, complaining as fol-
lows:

1. That the order of the District Court ap-
proving and confirming the order of the Referee

and allowing the claims of the claimants therein named is contrary to law.

2. That said order is not sustained by the facts as contained in the stipulation of facts filed herein.

3. That the court in making said order held that the Credit reserve fund created by the bankrupt was subject only to losses for credit extended to members of the bankrupt, whereas, under the by-laws of the bankrupt the Credit Reserve Fund was applicable to all losses of the bankrupt corporation.

4. That the court in making said order held that the claimants, as contributors to the credit reserve fund, are on a parity with all general unsecured creditors, whereas, credit reserve contributors are entitled to dividends only after payment in full of the claims of general creditors of the bankrupt.

H. E. WARNER

Trustee in Bankruptcy of Puget Sound
Quality Stores, a Washington corpo-
ration.

By EDWARD F. STERN

On behalf of Stern & Stern and Bogle,
Bogle & Gates, attorneys for Trustee.

Received copy of within Assignment of Errors
this 16th day of December, 1936.

J. SPEED SMITH and
HENRY ELLIOTT Jr. and
C. A. SCHNEIDER

Attorneys for Appellees

[Endorsed]: Dec. 22, 1936.

[Title of Court and Cause.]

CITATION ON APPEAL

United States of America—ss.

The President of the United States to R. E. Schoner,
C. P. Ainsworth, J. E. Roullard and O. M.
Freeborg, Greeting:

You and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the 9th Circuit, in the City of San Francisco on the 20th day of January, 1937, pursuant to an appeal duly obtained and filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein you are appellee and H. E. WARNER, Trustee of the above named bankrupt is the appellant, to show cause, if any there be, why the order in said appeal mentioned should not be reversed and corrected, and why speedy justice should not be done to the parties in that behalf, and to do and receive that which may appertain to justice to be done in the premises.

WITNESS, the Honorable JOHN C. BOWEN,
United States District Judge for the Western District of Washington, Northern Division, on the 21st day of December, 1936.

JOHN C. BOWEN

United States District Judge

Service of the above citation on appeal accepted this 22nd day of December, 1936.

J. SPEED SMITH

HENRY ELLIOTT Jr. and

C. A. SCHNEIDER

Attorneys for Claimants-Appellees

[Endorsed]· Filed Dec. 22, 1936.

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the United States District Court
for the Western District of Washington, North-
ern Division:

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the 9th Circuit, pursuant to an appeal allowed in the above entitled proceeding, and to include in such transcript the following:

1. Referee's Certificate on Review, together with the following papers transmitted therewith:
 - a. Proof of Claim #321 of R. E. Schoner.
 - b. Proof of claim #327 of C. P. Ainsworth.
 - c. Proof of Claim #330 of J. E. Roullard.
 - d. Proof of Claim #338 of O. M. Freeborg.
 - e. Trustee's objections to the Claims, above mentioned.
 - f. Stipulation of Facts upon hearing of Trustee's Objections to Proofs of Claim, above mentioned.
 - g. Referee's order overruling Objections to Claims.
 - h. Trustee's Petition for Review of the Order of the Referee.
2. Order Confirming Referee's Order Overruling Objections to said claims and Judgment Allowing said Claims and Order Allowing Exceptions.
3. Petition for Appeal.
4. Assignment of Errors.
5. Citation on Appeal.

6. Praeipe for Transcript of Record.

EDWARD F. STERN

On behalf of Stern & Stern, and Bogle,
Bogle & Gates, attorneys for H. E.
Warner, Trustee of the above named
Bankrupt—Appellant.

Service of the above Praeipe admitted this 21st
day of December, 1936.

C. A. SCHNEIDER

J. SPEED SMITH and

HENRY ELLIOTT Jr.

Attorneys for the Claimants—Appellees.

[Endorsed]: Filed Dec. 22, 1936.

[Title of Court and Cause.]

CERTIFICATE OF CLERK, UNITED STATES
DISTRICT COURT, TO TRANSCRIPT OF
RECORD.

United States of America,
Western District of Washington—ss.

I, EDGAR M. LAKIN, Clerk of the United
States District Court for the Western District of
Washington, do hereby certify this typewritten
transcript, to be a full, true, correct and complete
copy of so much of the record, papers and other
proceedings in the above and foregoing cause as is
required by praeipe of counsel filed and shown
herein, as the same remain of record and on file in
the office of the Clerk of said Court, and that the

same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant herein for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Act of Feb. 11, 1925) for making record, certificate or return, 50 folios at 15¢.....	\$7.50
Certificate of Clerk to transcript of record	.50
	\$8.00

I hereby certify that the above cost for preparing and certifying record, amounting to \$8.00, has been paid to me by attorney for appellant.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court, at Seattle, in said district, this 29th day of December, 1936.

[Seal] EDGAR M. LAKIN
Clerk of United States District Court, Western
District of Washington.

By F. W. MOSES

Deputy

[Endorsed]: No. 8435. United States Circuit Court of Appeals for the Ninth Circuit. H. E. Warner, Trustee of the Puget Sound Quality Stores, a Washington corporation, Bankrupt, Appellant, vs. R. E. Schoner, C. P. Ainsworth, J. E. Roullard, and O. M. Freeborg, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed January 2, 1937.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

